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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

On Appeal to the Board of Appeals and Interferences

Appellant(s)	:	Viveka Linde et al.	Examiner: Andrew Rudy J.
Serial No.	:	10/006,600	Group Art Unit: 3627
Filed	:	December 5, 2001	
Title	:	METHOD FOR DETERMINING THE POST-LAUNCH PERFORMANCE OF A PRODUCT ON A MARKET	

REPLY BRIEF ON APPEAL

Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants file this paper in response to the Examiner's Answer ("Answer") mailed on October 4, 2007. Further, Appellants request an Oral Hearing.

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I. **Appellants' Response to the Examiner's Answer (page 4 § (10) Response to Arguments).**

With respect to the Answer's conclusory statements regarding the 35 U.S.C. § 112 rejection, appellants respectfully request careful reconsideration of the previous Replies and the Appellants' Brief (including appellants' proposal to amend the claims to narrow issues on appeal). (See Appeal Brief § IV Status of Amendments and § VII Arguments).

With respect to the Answer's statements regarding the 35 U.S.C. § 103(a) rejection, appellants respectfully request careful reconsideration of the previous Replies and the Appellants' Brief. (See Appeal Brief § V Summary of Claimed Subject Matter and § VII Arguments).

Further, with respect to the Answer's mistaken position that the claims do not recite "product marketing" (see Answer page 3 § 10), appellants note that claim 1 reads:

A method for determining the post-launch performance of a **[i.e. a specific]** product on a market, comprising:

storing, in a database, collected first data related to at least one key success factor, associated with at least a ***market performance which is related to said product***

storing, in a database, collected second data related to unmet product needs on said market;

storing, in a database, collected third data related to a propensity of a decision-maker to choose said product;

linking a computer to said databases; and

using a simulation model on said computer to calculate **a future market share of said product** based on said collected first, second, and third data, thereby determining said post-launch performance on said market. (emphasis added).

With respect to the Answer's mistaken position that the claims do not recite "using a computer simulation model to project a future market share of the specific subject product" (see Answer page 4 § 10),appellants again note that claim 1 reads:

A method for determining the post-launch performance of a **[i.e. a specific]** product on a market, comprising:

storing, in a database, collected first data related to at least one key success factor, associated with at least a **market performance which is related to said product**

storing, in a database, collected second data related to unmet product needs on said market;

storing, in a database, collected third data related to a propensity of a decision-maker to choose said product;

linking a computer to said databases; and

using a simulation model on said computer to calculate a future market share of said product based on said collected first, second, and third data, thereby determining said post-launch performance on said market. (emphasis added).

Appellants respectfully submit that a person or ordinary skill in the art understands with reasonable certainty that **'using a simulation model on said computer'** is the same as and equivalent to **'using a computer simulation model.'** Thus, it is unclear why the Answer takes the position that Appellant' Remarks are not on point with regards to the claim language. In case this is a valid basis for rejecting Appellant's arguments and claims, appellants request

reconsideration of the Arguments replacing the offending phrase **"using a computer simulation model to project a future market share of the specific subject product"** with the exact phrase **"using a simulation model on said computer to calculate a future market share of said product"** as recited in the claims.

Appellants traverse the Answer's statement deeming that Delurgio has "a computer simulation model on the computer." As discussed at length in Appellants' Brief, Delurgio does not show, teach or suggest **"a simulation model on said computer to calculate a future market share of said product,"** as recited in the claims. (See e.g., Appellants' Brief, page 12, last sentence). Appellants further note that the Answer's statement that "Appellant does not contest the Official Notice" mischaracterizes Appellants' Remarks and Arguments. In any case, Appellants now explicitly contest the Official Notice.

Appellants further note that the Answer is unclear (and unfair) in stating that "the Official Notice is deemed to 'fill in gaps' for Delurgio. It is unstated which 'gaps' are being filled in Delgurio. To establish a proper case of prima facie obviousness "the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Appellants submit that the Answer's (and previous Office Actions) conclusory statements do not present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious.

For the foregoing reasons, the Examiner' rejection of claims 1-3 should be reversed.

III. Conclusion

For the reasons set forth herein, as well as for the reasons set forth in Appellants' Brief, Appellants respectfully request reversal of the rejections and allowance of claims 1-3.

Respectfully submitted,

Dated: December 4, 2007

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